

Smart Buildings Policy Project

Alcatel USA

American Electronics Association

Association for Local
Telecommunications Services

AT&T

Comcast Business Communications

Competitive Telecommunications
Association

Digital Microwave Corporation

Focal Communications Corporation

The Harris Corporation

Highspeed.com

Information Technology
Association of America

Lucent Technologies

NetVoice Technologies, Inc.

Network Telephone Corporation

Nokia Inc.

International Communications Association

P-Corn, Inc.

Siemens

Telecommunications Industry Association

Teligent

Time Warner Telecom

Winstar Communications Inc.

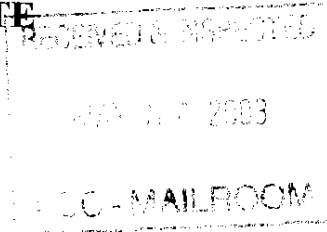
Wireless Communications
Association International

WorldCom

XO Communications, Inc.

SBPP/ALTS
Suite 900
888 17th Street NW
Washington, DC 20006
Tel: 202-969-2587
Fax: 202-969-2581

EX PARTE



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EX PARTE OR LATE FILED

Thomas Cohen
Smart Buildings Policy Project
888 17th Street, NW
Suite 900
Washington, DC 20006

May 22, 2003

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

Re: In the Matter of Rules and Regulations Implementing the Telephone
Consumer Protection Act of 1991; CG 02-278

Ms. Dortch,

Please be advised that the attached ex parte letter was sent today to K. Dane Snowden, Margaret Egler, Bryan Tramont, Matthew Brill, Daniel Gonzalez, Jessica Rosenworcel and Lisa Zaina. This letter outlines the position of the Smart Buildings Policy Project ("SBPP") in the above-captioned open proceeding.

Please contact me with any questions regarding this filing. I may be reached at (202) 887-1203.

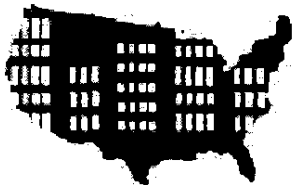
Sincerely,

/s/

Thomas Cohen
Smart Buildings Policy Project

Enclosures

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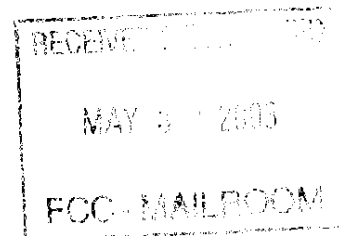
Wireless Communications
Association International

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May 22, 2003

K. Dane Snowden
Federal Communications Commission
Consumer & Governmental Affairs
445 12th Street, SW
Washington, DC 20554



Re: In the Matter of Rules and Regulations Implementing the Telephone
Consumer Protection Act of 1991; CG 02-278

Dear Mr. Snowden,

On behalf of the Smart Buildings Policy Project ("SBPP"),¹ please find below ex parte comments in the above-referenced proceeding.

In its Further Notice of Proposed Rulemaking, the Federal Communications Commission ("FCC" or "Commission") sought comments on its requirements under the recent Do-Not-Call Implementation Act.² Under the Do-Not-Call Implementation Act, the FCC is charged with consulting and coordinating with the Federal Trade Commission ("FTC") to "maximize consistency with the rule promulgated by the Federal Trade Commission."³

While the SBPP understands the need to protect consumers from unwanted telephone calls, a wholesale adoption of the FTC's rules, including its definition of existing business relationship ("EBR"), could substantially harm consumers of telecommunications services by inhibiting a potential customer's ability to choose a competitive local exchange provider ("CLEC") over the incumbent local exchange ("ILEC") provider. Specifically, the EBR definition could result in mistakenly and artificially providing ILECs with unfettered access to customers in multi-tenant environments ("MTEs") while denying the same access to CLECs.

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¹ The SBPP is a coalition of telecommunications carriers, equipment manufacturers, and other organizations that support nondiscriminatory telecommunications carrier access to tenants in multi-tenant environments ("MTEs"). The SBPP was formed after many telecommunications carriers found that building access posed a very serious barrier to facilities-based competition.

² *In re Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Further Notice of Proposed Rulemaking*, 2003 LEXIS 1546 (2003).

³ Do-Not-Call Implementation Act, Pub. L. No. 109-10, 117 Stat. 557 (2003).

In developing its revisions to the current Telecommunications Consumer Protection Act (“TCPA”), the Commission must maintain competitive neutrality among local exchange providers (“LECs”) rather than increase CLEC barriers to entry in multi-tenant buildings. CLECs continue to be confronted with persistent and pervasive problems precluding competitive access to multi-tenant environments.⁴ Often, the only opportunity for real-time communications with MTE tenants occurs over the telephone. If adopted as currently drafted, the EBR definition would permit ILECs with monopoly-level market shares to enjoy telephone access to MTE tenants while prohibiting competitors from enjoying the same access. Such a result amounts to an additional, substantial, and unnecessary barrier for competitive carriers and an unwarranted and unearned advantage for the ILEC. The SBPP therefore disagrees with the suggestion from Verizon that the FCC adopt the FTC regulations wholesale without essentially engaging in any serious analysis.⁵

If the Commission, in examining how to maximize the TCPA’s consistency with the FTC’s amended Telemarketing Sales Rule (“TSR”), decides to adopt the “established business relationship” exception included in the TSR, the exception must not effectively serve to allow incumbents to preserve their often monopoly level market share. If physical barriers to MTE access persist and CLECs are also prohibited from telemarketing to potential customers within those same buildings, because those customers already have an established business relationship with an ILEC, local telecommunications competition will be further stifled.

Applying the “established business relationship” exception differently, for example to ILECs and CLECs, poses an additional barrier to CLECs’ ability to compete for customers in commercial and residential buildings. In many markets, ILECs hold over 90% telecommunications market share leaving a very small percentage of potential customers to whom CLECs may telemarket as a result of the exception. Thus, all LECs –both ILECs and CLECs need equal status, embodied in a requirement that all such carriers either presumptively possess an established business relationship with MTE tenants or, less attractively, that the incumbent (whose company-base is the result of a monopoly) does not qualify for the “established business relationship” exception.

In drafting an amended TCPA that is consistent with the Federal Trade Commission’s amended TSR, the Commission should consider the potential for inequity if CLECs face both physical barriers to building access and potential telemarketing barriers because of the “established business relationship” exception that would weigh heavily in the ILEC’s favor and permit that all LECs – not just the incumbent – may market to potential customers.

⁴ See Comments of the Smart Buildings Policy Project filed to the *Further Notice of Proposed Rulemaking* in WT Dkt. No. 99-217, at 7-8 (March 8, 2003).

⁵ See Further Comments of Verizon filed to the *Further Notice of Proposed Rulemaking* in CG Dkt. No. 02-278, at 2 and 4 (May 5, 2003).

The Smart Buildings Policy Project appreciates the Commission's consumer protection efforts and respectfully requests that the Commission take into consideration its comments in this rulemaking.

Sincerely,

/s/

Thomas Cohen
Smart Buildings Policy Project

The above material has also been sent via First Class Mail May 22, 2003 to the following recipients:

Margaret Egler
CGB Deputy Bureau Chief
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445 12th St. SW
Washington, DC 20554

Bryan Tramont
Senior Legal Advisor, Office Chairman Powell
Federal Communications Commission
445 12th St. SW
Washington, DC 20554

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Lisa Zaina
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Daniel Gonzalez
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